

# STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of



**DECISION** 

HMO-173793

## PRELIMINARY RECITALS

Pursuant to a petition filed April 19, 2016, under Wis. Stat., §49.45(5), to review a decision by the iCare HMO to deny Medical Assistance (MA) approval for Ensure, a hearing was held on July 12, 2016, by telephone. A hearing set for June 14, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner has an allowed diagnosis for approval of Ensure.

#### PARTIES IN INTEREST:

Petitioner:



Petitioner's Representative:

Disabilityrights/Wisconsin 6737 W. Washington St., Suite 3230 Milwaukee, WI 53214

# Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, WI53703

iCare
1555 N. Rivercenter Drive, Suite 206

Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider Division of Hearings and Appeals

#### **FINDINGS OF FACT**

- 1. Petitioner (CARES # ) is a resident of Milwaukee County who receives MA.
- 2. Petitioner enrolled in the iCare HMO on December 1, 2015. On February 10, 2016 Home Care Medical requested prior authorization on petitioner's behalf for purchase of Ensure, with the goal to escalate petitioner's daily caloric intake.

- 3. iCare's Medical Director, reviewed the request and determined that it must be denied because petitioner did not have a required medical diagnosis. The HMO denied the request by a letter dated February 28, 2016.
- 4. Petitioner asked the HMO Grievance Committee to review the denial. After a meeting with petitioner, the committee upheld the denial by a letter dated April 19, 2016.
- 5. Petitioner's medical history does not show that he has a diagnosis for which Ensure would be covered under Wisconsin MA policy.

#### **DISCUSSION**

Under the discretion allowed by Wis. Stat., §49.45(9), the Department now requires MA recipients to participate in HMOs. Wis. Admin. Code, §DHS 104.05(2)(a). MA recipients enrolled in HMOs must receive medical services from the HMOs' providers, except for referrals or emergencies. Admin. Code, §DHS 104.05(3).

The criteria for approval by a managed care program contracted with the DHCAA are the same as the general MA criteria. See Admin. Code, §DHS 104.05(3), which states that HMO enrollees shall obtain services "paid for by MA" from the HMO's providers. The department must contract with the HMO concerning the specifics of the plan and coverage. Admin. Code, §DHS 104.05(1).

If the enrollee disagrees with any aspect of service delivery provided or arranged by the HMO, the recipient may file a grievance with the department or appeal to the Division of Hearings and Appeals. Just as with regular MA, when the department denies a grievance from an HMO recipient, the recipient can appeal the department's denial within 45 days. Wis. Stat., §49.45(5); Admin. Code, §DHS 104.01(5)(a)3.

Wis. Admin. Code, §DHS 107.10(2)(c) requires providers to seek prior authorization for food supplements. Products that do not meet the §107.10(2)(c) criteria are denied. §DHS 107.10(2)(c) states that medically necessary nutritional supplements used for the treatment of severe health conditions such as pathologies of the gastrointestinal tract or metabolic disorders can be covered by MA. The DHCAA drafted criteria for reviewing prior authorization requests for such supplements.

The current prior authorization guidelines for food supplements such as Ensure are found on-line at https://www.forwardhealth.wi.gov/WIPortal/Subsystem/KW/Display.aspx?ia=1&p=1&sa=121&s=3&c=5 5&nt=Covered Enteral Nutrition Products&adv=Y. Topic 14817 provides that a supplement can be approved where the following disorders exist:

- A severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation (i.e., lesions, mucositis), or defect.
- Pathology of the gastrointestinal (GI) tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed.
- Transition from tube feeding (enteral or parenteral) to an oral diet.

In addition, the person must require the supplement because regular foods cannot be ingested to provide sufficient nourishment.

The request for Ensure for petitioner was denied because the medical record does not establish that petitioner has any of the above disorders. Petitioner testified that he recently saw a new doctor who is strongly suspicious that petitioner has a GI tract disorder, but at present nothing concrete has been established and more tests have been ordered. Even with this new information both the period and the Department's Medical Consultant, agree that the medical information is insufficient to show

the requisite disorder. While petitioner's new doctor believes that there might be a GI tract disorder, he notes that it is possible that medication or insufficient oral intake might be the source of the problem.

As noted, if the testing does show a GI tract disorder Ensure can be requested again, but at this point I must affirm the denial.

#### **CONCLUSIONS OF LAW**

The HMO correctly denied a request for Ensure because petitioner has not received the required medical diagnosis for which approval can be granted.

#### THEREFORE, it is

## **ORDERED**

That the petition for review is hereby dismissed.

# REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

#### APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 18th day of July, 2016

Brian C. Schneider Administrative Law Judge Division of Hearings and Appeals



# State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on July 18, 2016.

iCare

Division of Health Care Access and Accountability